

Senate Bill No. 1399

CHAPTER 176

An act to amend Sections 25981, 25982, 25984, and 25985 of, to add Section 25982.1 to, and to repeal and add Section 25983 of, the Public Resources Code, relating to public resources.

[Approved by Governor July 22, 2008. Filed with
Secretary of State July 22, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1399, Simitian. Public resources: solar shading.

Existing law prohibits a person owning or in control of a property from allowing a tree or shrub to be placed or to grow on the property subsequent to the installation of a solar collector on the property of another if the tree or shrub casts a shadow of a specified size on the collector absorption area during specified times. A person who violates this prohibition and who fails to remove or alter the tree or shrub after receiving reasonable notice is guilty of an infraction for maintaining a public nuisance and subject to a criminal fine not to exceed \$1,000 for each violation. Existing law exempts trees and shrubs under specified conditions. Existing law authorizes a city, county, or city and county to adopt an ordinance exempting its jurisdiction from the above prohibition. Existing law defines "solar collector" for these purposes as a device or structure used primarily to transform solar energy into thermal, chemical, or electrical energy.

This bill would authorize the owner of property where the solar collector is to be installed to provide, prior to its installation, a written notice by certified mail containing specified information to owners of affected property. The bill would, further, exempt trees and shrubs planted prior to the time of the installation of a solar collector, trees and shrubs that are subject to a local ordinance, or the replacement of trees or shrubs that have been growing before the installation of a solar collector and that are subsequently removed for the protection of public health, safety, or the environment. The bill would redefine "solar collector" to be the above described device or structure on the roof of a building, except it would include the device or structure installed on the ground if it cannot be installed on the roof of the building due to specified conditions, and would exclude a device or structure that is designed and intended to offset more than the building's electricity demand. The bill would repeal the public nuisance violation of the above requirement, and would provide that a tree or shrub maintained in violation of the above requirement is instead a private nuisance if the person who maintains or permits the maintenance of the tree or shrub receives a written notice from the owner of the affected solar collector requesting compliance. The bill would provide that a local ordinance

specifying the requirements for tree preservation or solar shade control would govern within the jurisdiction that adopted the ordinance. The bill would also make technical nonsubstantive changes.

The people of the State of California do enact as follows:

SECTION 1. Section 25981 of the Public Resources Code is amended to read:

25981. (a) As used in this chapter, “solar collector” means a fixed device, structure, or part of a device or structure, on the roof of a building, that is used primarily to transform solar energy into thermal, chemical, or electrical energy. The solar collector shall be used as part of a system that makes use of solar energy for any or all of the following purposes:

- (1) Water heating.
- (2) Space heating or cooling.
- (3) Power generation.

(b) Notwithstanding subdivision (a), for the purpose of this chapter, “solar collector” includes a fixed device, structure, or part of a device or structure that is used primarily to transform solar energy into thermal, chemical, or electrical energy and that is installed on the ground because a solar collector cannot be installed on the roof of the building receiving the energy due to inappropriate roofing material, slope of the roof, structural shading, or orientation of the building.

(c) For the purposes of this chapter, “solar collector” does not include a solar collector that is designed and intended to offset more than the building’s electricity demand.

(d) For purposes of this chapter, the location of a solar collector is required to comply with the local building and setback regulations, and to be set back not less than five feet from the property line, and not less than 10 feet above the ground. A solar collector may be less than 10 feet in height only if, in addition to the five-foot setback, the solar collector is set back three times the amount lowered.

SEC. 2. Section 25982 of the Public Resources Code is amended to read:

25982. After the installation of a solar collector, a person owning or in control of another property shall not allow a tree or shrub to be placed or, if placed, to grow on that property so as to cast a shadow greater than 10 percent of the collector absorption area upon that solar collector surface at any one time between the hours of 10 a.m. and 2 p.m., local standard time.

SEC. 3. Section 25982.1 is added to the Public Resources Code, to read:

25982.1. (a) An owner of a building where a solar collector is proposed to be installed may provide written notice by certified mail to a person owning property that may be affected by the requirements of this chapter prior to the installation of the solar collector. If a notice is mailed, the notice shall be mailed no more than 60 days prior to installation of the solar collector and shall read as follows:

SOLAR SHADE CONTROL NOTICE

Under the Solar Shade Control Act (California Public Resources Code §25980 et seq.) a tree or shrub cannot cast a shadow greater than 10 percent of a solar collector absorption area upon that solar collector surface at any one time between the hours of 10 a.m. and 2 p.m. local standard time if the tree or shrub is placed after installation of a solar collector. The owner of the building where a solar collector is proposed to be installed is providing this written notice to persons owning property that may be affected by the requirements of the act no more than 60 days prior to the installation of a solar collector. The building owner is providing the following information:

Name and address of building owner:

Telephone number of building owner:

Address of building and specific location where a solar collector will be installed (including street number and name, city/county, ZIP Code, and assessor's book, page, and parcel number):

Installation date of solar collector:

Building Owner, Date

(b) If the owner of the building where a solar collector is proposed to be installed provided the notice pursuant to subdivision (a), and the installation date is later than the date specified in that notice, the later date shall be specified in a subsequent notice to persons receiving the initial notice.

(c) (1) A transferor of the building where the solar collector is installed may provide a record of persons receiving the notice pursuant to subdivision (a) to a transferee of the building.

(2) A transferor receiving a notice pursuant to subdivision (a) may provide the notice to a transferee of the property.

SEC. 4. Section 25983 of the Public Resources Code is repealed.

SEC. 5. Section 25983 is added to the Public Resources Code, to read:

25983. A tree or shrub that is maintained in violation of Section 25982 is a private nuisance, as defined in Section 3481 of the Civil Code, if the person who maintains or permits the tree or shrub to be maintained fails to remove or alter the tree or shrub after receiving a written notice from the owner or agent of the affected solar collector requesting compliance with the requirements of Section 25982.

SEC. 6. Section 25984 of the Public Resources Code is amended to read:

25984. This chapter does not apply to any of the following:

(a) A tree or shrub planted prior to the installation of a solar collector.

(b) A tree planted, grown, or harvested on timberland as defined in Section 4526 or on land devoted to the production of commercial agricultural crops.

(c) The replacement of a tree or shrub that had been growing prior to the installation of a solar collector and that, subsequent to the installation of the solar collector, dies, or is removed for the protection of public health, safety, or the environment.

(d) A tree or shrub that is subject to a city or county ordinance.

SEC. 7. Section 25985 of the Public Resources Code is amended to read:

25985. (a) A city, or for unincorporated areas, a county, may adopt, by majority vote of the governing body, an ordinance exempting their jurisdiction from the provisions of this chapter. The adoption of the ordinance shall not be subject to the California Environmental Quality Act (commencing with Section 21000).

(b) Notwithstanding the requirements of this chapter, a city or a county ordinance specifying requirements for tree preservation or solar shade control shall govern within the jurisdiction of the city or county that adopted the ordinance.